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Filing date: **11/19/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212024
Party	Plaintiff Republic Technologies (NA), LLC
Correspondence Address	ANTHONY J MCSHANE NEAL GERBER & EISENBERG LLP 2 N LASALLE ST STE 2300 CHICAGO, IL 60602 UNITED STATES amcshane@ngelaw.com, jcohen@ngelaw.com, temauelson@ngelaw.com, lpalumbo@ngelaw.com, afraker@ngelaw.com, ECFDocket@ngelaw.com
Submission	Other Motions/Papers
Filer's Name	Antony J. McShane
Filer's e-mail	amcshane@ngelaw.com, afraker@ngelaw.com, lpalumbo@ngelaw.com, lgonzalez@ngelaw.com, temauelson@ngelaw.com, ecfdocket@ngelaw.com
Signature	/Antony J. McShane/
Date	11/19/2015
Attachments	RepublicTechnologiesMotionForJudgement.pdf(1558160 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.
85/551,808 for S.O.B.

Published in the Official Gazette
on July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

Opposition No. 91212024

**REPUBLIC TECHNOLOGIES' MOTION FOR JUDGMENT
OR IN THE ALTERNATIVE TO SUSPEND**

Opposer, Republic Technologies (NA), LLC, has diligently worked to schedule and take the trial testimony of Applicant's designee, its Chief Executive Officer, Mr. Fran Brooks. However, Mr. Brooks has twice scheduled international travel during Republic Technologies' testimony period, including on the date that he had agreed to testify, and is declining to make himself available during the remainder of the current period or to offer an alternative date for his testimony. Applicant's counsel has represented that Mr. Brooks has failed to respond to communications for lengthy periods. Mr. Brooks' conduct strongly suggests that Applicant has lost interest in this proceeding does not intend to take further action. If that is the case, judgment in favor of Republic Technologies is appropriate. If it is not, it appears that Republic Technologies must compel Mr. Brooks' testimony by a subpoena issued pursuant to Rule 45 of the Federal Rules of Civil Procedure. Accordingly, pursuant to TBMP § 527.03, Opposer hereby

moves the Board to enter judgment in Opposer's favor. In the alternative, pursuant to 37 CFR § 2.117(c) and TBMP § 703.01(f)(2), Opposer moves to suspend this proceeding to enable it to subpoena Applicant's designee to provide trial testimony.

Applicant's Initial Agreement to Appear to Give Trial Testimony

On June 5, 2014, Republic Technologies served its Pretrial Disclosures, which disclosed its intent to elicit the testimony of Applicant, through its principal and Chief Executive Officer, Mr. Fran Brooks, on a variety of matters relevant to this proceeding, namely, (i) the development and history of the S.O.B. trademark; (ii) Applicant's intent in selecting and adopting the S.O.B. trademark; (iii) Applicant's business activities, presence and facilities in the Dominican Republic; (iv) Applicant's registration of the S.O.B. trademark in the Dominican Republic; (v) Applicant's efforts to register the S.O.B. trademark in the United States; (vi) the development, manufacture, marketing, advertising and sale of goods under and in connection with the S.O.B. trademark; (vii) the channels of trade of goods sold under and in connection with the S.O.B. trademark; and (viii) the actual and prospective customers for goods sold under and in connection with the S.O.B. trademark.

After the Board resolved several potentially dispositive motions, Republic Technologies' testimony period opened on September 14, 2015. *See* July 31, 2015 Order, Docket No. 30. Republic Technologies' counsel attempted to contact counsel for Applicant on August 14, 2015, to schedule Mr. Brooks' trial testimony on a mutually agreeable date during Republic Technologies' testimony period. Shortly thereafter, Republic Technologies' counsel followed up with Applicant's counsel to suggest scheduling Mr. Brooks' deposition on a date shortly after the opening of Republic Technologies' trial period. *See* Ex. A. Over the next 30 days, Republic Technologies made multiple additional requests for Applicant's counsel to provide potential

dates for Mr. Brooks' testimony and served a formal Notice of Testimony Deposition suggesting a date certain for Mr. Brooks' testimony. *See* Exs. B and C. Applicant's counsel, however, represented that Mr. Brooks had not responded to his attempts to make contact. *See* Ex. D.

Then, on September 14, 2015 – the day Republic Technologies' trial period was set to open – Applicant's counsel represented that Mr. Brooks had elected to travel out of the country until "the latter part of October," meaning that Mr. Brooks would be unavailable for Republic Technologies' entire trial period. *See* Ex. E. As a result, the parties agreed to seek an extension of the testimony periods (and all other dates) to accommodate Mr. Brooks' schedule and to find a mutually agreeable date on which to take Applicant's trial testimony. Thus, the parties jointly moved the Board for a 60-day extension of all dates in this proceeding, *Id.*, which was granted on September 28, 2015, and reset Republic Technologies' to close on December 13, 2015. *See* Docket No. 32.

On September 29, 2015, counsel for Applicant proposed (for the first time) a date for Mr. Brooks' testimony, which ultimately led to an agreement between the parties pursuant to which Mr. Brooks' trial testimony would be taken on November 20, 2015, at the office of Applicant's counsel in Los Angeles. *See* Ex. F. To confirm the parties' agreement, Republic Technologies served an updated Notice of Testimony Deposition on October 16, 2015. *See* Ex. G.

Notwithstanding the foregoing, on November 3, 2015, Applicant's counsel notified counsel for Republic Technologies that Mr. Brooks would once again be traveling out of the country and would not be available on November 20 as agreed and noticed. *See* Ex. H. Applicant's counsel also represented that he received this information from Mr. Brooks' assistant and that Mr. Brooks had not contacted him. *Id.* Moreover, on November 11, 2015, when Republic Technologies requested a new date certain for Mr. Brooks' testimony, Applicant's

counsel represented that he “[had] not received any further direction” from Mr. Brooks and did not want to devote additional time to this matter before receiving such direction. *See* Ex. I. To date, Applicant has not proposed a new date to give its trial testimony, either within or beyond Republic Technologies’ current testimony period. Applicant has also failed to communicate with its counsel regarding rescheduling its testimony.

**Judgment Against Applicant is Appropriate and
Good Cause Exists to Suspend This Proceeding**

If an applicant indicates that it will not take any further action in an opposition proceeding, the Board has the inherent authority to enter judgment in favor of the opposer. TBMP § 527.03. In addition, the Board may suspend a proceeding upon motion of a party. 37 CFR § 2.117(c); TBMP § 510. All motions to suspend are subject to the “good cause” standard. *Nat’l Football League v. DNH Mgmt. LLC*, 85 USPQ2d 1852, 1855 n.8 (TTAB 2008). In the absence of consent, the party seeking suspension must comply with its responsibilities, including the responsibility for moving the case forward on the prescribed schedule. *Id.* If an adverse party residing in the United States is not willing to appear voluntarily to testify, the party wishing to take testimony must secure the witness’s attendance by a Rule 45 subpoena. TBMP § 703.01(f)(2).

Here, Republic Technologies has diligently attempted to secure the testimony of Applicant during Republic Technologies’ trial period as originally scheduled and as reset. Moreover, the parties had an agreement that Applicant’s designee would voluntarily appear to give testimony, which was the basis for the parties’ joint motion for a 60-day extension of all dates in the proceeding. Unfortunately, Applicant has disregarded the parties’ agreement and has failed to propose alternative dates for its testimony or even to provide any further direction to its counsel. Republic Technologies respectfully suggests that Applicant’s conduct is tantamount to

an admission that Applicant will not take any further action in this matter and renders the entry of judgment appropriate pursuant to TBMP § 527.03. At a minimum, however, Applicant's conduct indicates that it is not willing to provide trial testimony voluntarily during Republic Technologies' trial period. Such conduct should not be allowed to prejudice Republic Technologies. Applicant's conduct therefore constitutes good cause for suspending this proceeding to permit Republic Technologies to issue and enforce a subpoena in the District Court for the Southern District of California, where Applicant's witness resides, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

Respectfully submitted,

REPUBLIC TECHNOLOGIES (NA), LLC

By: /Antony J. McShane/

One of Its Attorneys

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Firm ID 13739

Dated: November 19, 2015

CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, hereby certify that I caused a true and correct copy of the foregoing **REPUBLIC TECHNOLOGIES' MOTION FOR JUDGMENT OR IN THE ALTERNATIVE TO SUSPEND** to be served upon:

Richard B. Jefferson
M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3
Los Angeles, CA 90036

via U.S. Mail, with a courtesy copy sent via email, on the date noted below:

Date: November 19, 2015

By: /Andrew S. Fraker/
One of the Attorneys for Republic Technologies,
Republic Technologies (NA), LLC

22085959.5

Exhibit A

Fraker, Andrew S.

From: Fraker, Andrew S.
Sent: Monday, August 17, 2015 5:41 PM
To: 'richardjefferson@metallawgroup.com'
Cc: McShane, Antony J.
Subject: Deposition scheduling - Republic Technologies v. Brooks, TTAB Opposition No. 91212024

Mr. Jefferson,

Following up on my voice mail last Friday, we would like to schedule dates for depositions in the above-referenced proceeding. We would like to depose Mr. Brooks promptly following the opening of our trial period on September 14, 2015. Our designated witness, Seth Gold, travels frequently but will be available on October 6-8, 2015. Please provide options for dates that your client will be available.

Best regards,
Andrew

Andrew S. Fraker
Attorney at Law
NEAL • GERBER • EISENBERG
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
312.269.5280 phone • 312.429.3588 fax
afraaker@ngelaw.com • www.ngelaw.com

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Exhibit B

Fraker, Andrew S.

From: Fraker, Andrew S.
Sent: Thursday, August 27, 2015 11:57 AM
To: 'Richard Jefferson'
Cc: McShane, Antony J.
Subject: RE: Deposition scheduling - Republic Technologies v. Brooks, TTAB Opposition No. 91212024

Hello Richard,

I am back in the office. Please send potential deposition dates as soon as possible so that we do not have any difficulties in taking Mr. Brooks' testimony during the testimony period.

Best regards,
Andrew

Andrew S. Fraker
Attorney at Law
NEAL • GERBER • EISENBERG
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
312.269.5280 phone • 312.429.3588 fax
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From: Richard Jefferson [<mailto:richardjefferson@metallawgroup.com>]
Sent: Monday, August 17, 2015 5:44 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Deposition scheduling - Republic Technologies v. Brooks, TTAB Opposition No. 91212024

Hello Andrew,

I have a message out to Mr. Brooks for some potential dates. It may be more convenient to do it in San Diego. I will circle back as soon as he lets me know.

Best, Richard

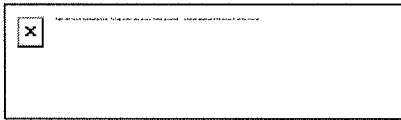
Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Thursday, August 27, 2015 12:37 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Deposition scheduling - Republic Technologies v. Brooks, TTAB Opposition No. 91212024

Hello Andrew,

I am still waiting for him to get back to me. As soon as he does I will let you know.

Best, Richard



Richard B. Jefferson, Esq.,
Founding Partner
M.E.T.A.L. Law Group, LLP
SAG-AFTRA Plaza
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On Thu, Aug 27, 2015 at 9:56 AM, Fraker, Andrew S. <afraker@ngelaw.com> wrote:

Fraker, Andrew S.

From: Fraker, Andrew S.
Sent: Thursday, August 20, 2015 4:13 PM
To: 'Richard Jefferson'
Cc: McShane, Antony J.
Subject: RE: Deposition scheduling - Republic Technologies v. Brooks, TTAB Opposition No. 91212024

Hello Richard,

I will be out of the office until next Wednesday but will have some access to email. Please copy my colleague Tony McShane when you have proposed dates.

Best regards,
Andrew

Andrew S. Fraker
Attorney at Law
NEAL • GERBER • EISENBERG
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
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From: Richard Jefferson [<mailto:richardjefferson@metallawgroup.com>]
Sent: Monday, August 17, 2015 5:44 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Deposition scheduling - Republic Technologies v. Brooks, TTAB Opposition No. 91212024

Hello Andrew,

I have a message out to Mr. Brooks for some potential dates. It may be more convenient to do it in San Diego. I will circle back as soon as he lets me know.

Best, Richard

Exhibit C

Fraker, Andrew S.

From: Fraker, Andrew S.
Sent: Wednesday, September 09, 2015 4:19 PM
To: 'Richard Jefferson'
Cc: McShane, Antony J.
Subject: Notices of Depositions: Republic Technologies (NA), LLC v. Brooks Entertainment, Inc.
Attachments: #21777083v2 - (Notice of Testimony Deposition of S. Gold -- SOB Opposition).PDF; #21777271v2 - (Notice of Testimony Deposition of F. Brooks -- SOB Opposition).PDF

Richard,

To keep the proceedings moving forward, attached are courtesy copies of Notices of Deposition for Seth Gold and Fran S. Brooks, which we served today by mail. We have some flexibility as to the dates, but, as you know, we would like to get them solidified soon. Please give me a call when you have had the chance to discuss with Mr. Brooks.

Best regards,
Andrew

Andrew S. Fraker
Attorney at Law
NEAL • GERBER • EISENBERG
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

REPUBLIC TECHNOLOGIES (NA), LLC

Opposer,

v.

BROOKS ENTERTAINMENT, INC.

Applicant.

Opposition No. 91212024

Mark: S.O.B

Serial No.: 85/551,808

Notice of Testimony Deposition of Fran S. Brooks on Behalf of Applicant

Please take notice that, on September 22, 2015, beginning at 10:00 a.m., pursuant to 37 C.F.R. § 2.123(a), Opposer, Republic Technologies (NA), LLC (“Republic Technologies”), will take the testimony deposition of Fran S. Brooks, Chief Executive Officer of Brooks Entertainment, Inc. (“Brooks Entertainment”), P.O. Box 181205, Coronado, California 92178. Mr. Brooks will be asked to testify on behalf of Brooks Entertainment on the following topics and matters:

- (a) development and history of the S.O.B mark;
- (b) the goods offered or sold under or in connection with the S.O.B mark;
- (c) importation to the United States of goods bearing the S.O.B mark;
- (d) sales in intrastate and interstate commerce of goods under and in connection with the S.O.B mark;
- (e) channels of trade of the goods distributed and sold under and in connection with the S.O.B mark in the United States;
- (f) consumers and intended consumers of goods distributed and sold under and in connection with the S.O.B mark;
- (g) the manner in which the goods sold under and in connection with the S.O.B mark are promoted, advertised and marketed;

- (h) production of goods bearing the S.O.B mark in the Dominican Republic;
- (i) Brooks Entertainment's business presence in the Dominican Republic, including facilities and personnel;
- (j) Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (k) Brooks Entertainment's application to register the S.O.B mark in the United States.

Mr. Brooks will also be asked to provide testimony about:

- (1) Documents relating to the importation to the United States of goods bearing the S.O.B mark;
- (2) Documents relating to sales in intrastate and interstate commerce of goods bearing the S.O.B mark;
- (3) Documents relating to the promotion, advertisement and marketing of goods under and in connection with the S.O.B mark;
- (4) Documents relating to the production of goods bearing the S.O.B mark in the Dominican Republic
- (5) Documents relating to Brooks Entertainment's business presence in the Dominican Republic;
- (6) Documents relating to Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (7) Documents relating to Brooks Entertainment's application to register the S.O.B mark in the United States.

The noticed deposition will take place before an officer having the power to administer oaths under the law at the offices of the M.E.T.A.L. Law Group, LLP at 5757 Wilshire Boulevard, Penthouse Three, Los Angeles, California 90036.

Dated: September 9, 2015

/Antony J. McShane/
One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, state that I served a copy of ***NOTICE OF TESTIMONY DEPOSITION OF FRAN S. BROOKS ON BEHALF OF APPLICANT*** upon counsel for Applicant:

Richard Jefferson, Esq.
METAL Law Group LLP
5757 Wilshire Boulevard, PH3
Museum Square
Los Angeles, California 90036

via First Class U.S. Mail, with a courtesy copy via email, on this 9th day of September, 2015.

/Andrew S. Fraker/
Andrew S. Fraker

21777271.1

Exhibit D

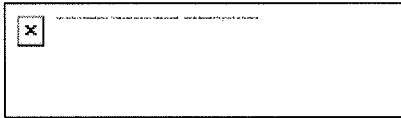
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Sent: Thursday, August 27, 2015 12:37 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Deposition scheduling - Republic Technologies v. Brooks, TTAB Opposition No. 91212024

Hello Andrew,

I am still waiting for him to get back to me. As soon as he does I will let you know.

Best, Richard



Richard B. Jefferson, Esq.,
Founding Partner
M.E.T.A.L. Law Group, LLP
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On Thu, Aug 27, 2015 at 9:56 AM, Fraker, Andrew S. <afraker@angelaw.com> wrote:

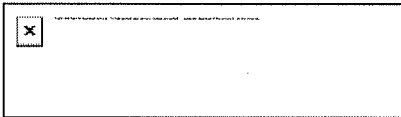
Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Monday, August 17, 2015 5:44 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Deposition scheduling - Republic Technologies v. Brooks, TTAB Opposition No. 91212024

Hello Andrew,

I have a message out to Mr. Brooks for some potential dates. It may be more convenient to do it in San Diego. I will circle back as soon as he lets me know.

Best, Richard



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e: rjefferson@metallawgroup.com

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On Mon, Aug 17, 2015 at 3:40 PM, Fraker, Andrew S. <afraaker@ngelaw.com> wrote:

Exhibit E

Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Monday, September 14, 2015 5:49 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Alternative deposition dates and extension of discovery

Andrew,

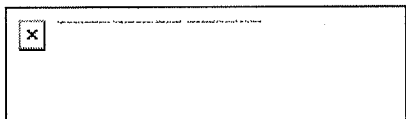
I got word today that Mr. Brooks will be back in California the latter part of October but I'm not available the last 2 weeks. I propose that we agree to a 60 day extension period for all dates. I will get some possible deposition dates in November for him.

I will also explore settlement possibilities. If he is interested I will send a formal proposal.

Kind regards,

Richard

=====



Richard B. Jefferson, Esq.,
Founding Partner
M.E.T.A.L. Law Group, LLP
SAG-AFTRA Plaza
5757 Wilshire Boulevard, Penthouse 3
Los Angeles, California 90036
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On Mon, Sep 14, 2015 at 3:29 PM, Fraker, Andrew S. <afraker@ngelaw.com> wrote:

Richard,

Confirming our conversation this morning, it is our understanding that as a result of Mr. Brooks' travel schedule you have not been able to confer with him regarding the Notices of Testimony that we served last week, but that you expect to confer with him shortly and will be proposing alternative dates. Under the circumstances, we agreed that we will not proceed with the testimony dates as noticed, but will to continue to work together to find mutually agreeable dates and to jointly move for an extension of the discovery period as necessary to accommodate those dates.

In addition, as it has been some time since we discussed the possibility of settlement, I understand that you will discuss with your client his continued interest in the mark. If your client is interested in a settlement along the lines we briefly discussed, we would appreciate your making a formal proposal that we can review with our client.

We look forward to hearing from you shortly regarding these matters.

Best regards,

Andrew

Andrew S. Fraker

Attorney at Law

NEAL • GERBER • EISENBERG

Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700

Exhibit F

Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Friday, October 09, 2015 3:31 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.; Palumbo, Luci M.
Subject: Re: Republic Technologies v. Brooks Entertainment - Motion to Extend Time

Sounds good.

Our office in LA works best.

=====



Richard B. Jefferson, Esq.,
Founding Partner
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On Fri, Oct 9, 2015 at 1:22 PM, Fraker, Andrew S. <afraker@ngelaw.com> wrote:

Hello Richard,

We confirm that November 20 at 11 a.m. will work for Mr. Brooks' deposition. Are you anticipating it being located in Los Angeles or San Diego?

Best regards,

Andrew

Andrew S. Fraker

Attorney at Law

NEAL • GERBER • EISENBERG

Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
312.269.5280 phone • 312.429.3588 fax

afraker@ngelaw.com • www.ngelaw.com

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From: Richard Jefferson [mailto:richardjefferson@metallawgroup.com]

Sent: Tuesday, October 06, 2015 12:36 PM

To: Fraker, Andrew S.

Cc: McShane, Antony J.; Palumbo, Luci M.

Subject: Re: Republic Technologies v. Brooks Entertainment - Motion to Extend Time

Hello Andrew,

I received your voicemail. Mr. Brooks can do either November 20 or December 4 (11am start time). Let me know if one of those dates/times work.

Exhibit G

October 16, 2015

VIA FEDERAL EXPRESS

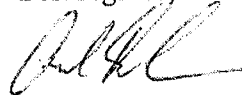
Richard B. Jefferson, Esq.
M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3
Los Angeles, California 90036

Re: Confirmation of Deposition Schedule

Dear Richard:

Enclosed is a Notice of Testimony Deposition of Brooks Entertainment, Inc. for Friday, November 20, 2015 at 11:00 a.m. at your office in Los Angeles. Based on our conversations, Fran S. Brooks will be the Rule 30(b)(6) designee for the subjects set forth in the enclosed Notice. If that is not the case, please let us know. Also enclosed is a Notice of Testimony Deposition of Seth I. Gold on behalf of Republic Technologies (NA), LLC, for Friday, December 11, 2015 at 10:00 a.m. at our office in Chicago. Also enclosed is a copy of Opposer's Pretrial Disclosures. Please let us know if you have any questions or concerns.

Best regards,



Andrew S. Fraker

ASF

Enclosures

21886625.1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

REPUBLIC TECHNOLOGIES (NA), LLC

Opposer,

v.

BROOKS ENTERTAINMENT, INC.

Applicant.

Opposition No. 91212024

Mark: S.O.B

Serial No.: 85/551,808

Notice of Testimony Deposition of Brooks Entertainment, Inc.

Please take notice that, on November 20, 2015, beginning at 11:00 a.m., pursuant to 37 C.F.R. § 2.123(a), Opposer, Republic Technologies (NA), LLC ("Republic Technologies"), will take the testimony deposition of Applicant Brooks Entertainment, Inc., which will be asked to testify on the following matters:

- (a) development and history of the S.O.B mark;
- (b) the goods offered or sold under or in connection with the S.O.B mark;
- (c) importation to the United States of goods bearing the S.O.B mark;
- (d) sales in intrastate and interstate commerce of goods under and in connection with the S.O.B mark;
- (e) channels of trade of the goods distributed and sold under and in connection with the S.O.B mark in the United States;
- (f) consumers and intended consumers of goods distributed and sold under and in connection with the S.O.B mark;
- (g) the manner in which the goods sold under and in connection with the S.O.B mark are promoted, advertised and marketed;
- (h) production of goods bearing the S.O.B mark in the Dominican Republic;

- (i) Brooks Entertainment's business establishment in the Dominican Republic, including facilities and personnel;
- (j) Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (k) Brooks Entertainment's application to register the S.O.B mark in the United States.

Brooks Entertainment will also be asked to provide testimony about:

- (1) Documents relating to the importation to the United States of goods bearing the S.O.B mark;
- (2) Documents relating to sales in intrastate and interstate commerce of goods bearing the S.O.B mark;
- (3) Documents relating to the promotion, advertisement and marketing of goods under and in connection with the S.O.B mark;
- (4) Documents relating to the production of goods bearing the S.O.B mark in the Dominican Republic
- (5) Documents relating to Brooks Entertainment's business establishment in the Dominican Republic;
- (6) Documents relating to Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (7) Documents relating to Brooks Entertainment's application to register the S.O.B mark in the United States.

The noticed deposition will take place before an officer having the power to administer oaths under the law at the offices of the M.E.T.A.L. Law Group, LLP at 5757 Wilshire Boulevard, Penthouse Three, Los Angeles, California 90036.

Dated: October 16, 2015

/s/ Antony J. McShane

One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, state that I served a copy of *Notice of Testimony*
Deposition of Brooks Entertainment, Inc. upon counsel for Applicant:

Richard Jefferson, Esq.
METAL Law Group LLP
5757 Wilshire Boulevard, PH3
Museum Square
Los Angeles, California 90036

via First Class U.S. Mail, with a courtesy copy via email, on this 16th day of October, 2015.

/Andrew S. Fraker/
Andrew S. Fraker

21777271.3

Exhibit H

Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Tuesday, November 03, 2015 5:40 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.; Palumbo, Luci M.; Gonzalez, Luz M.
Subject: Re: Republic Technologies (NA), LLC v. Brooks Entertainment, Inc. deposition notices

Andrew,

Mr. Brooks' assistant just told me that he has an urgent matter that has come up and he will be out of the country from Nov. 17 - Nov. 27.

I did not talk to him so I am trying to get clarification and proposed dates to reschedule his deposition for early December.

He apologized for the change.

I'll let you know when I hear back.

=====



Richard B. Jefferson, Esq.,
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e: rjefferson@metallawgroup.com

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Exhibit I

Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Wednesday, November 11, 2015 1:16 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Republic Technologies v. Brooks - rescheduling deposition

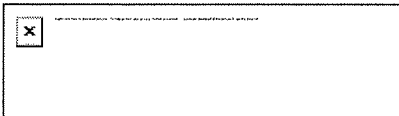
Hello Andrew,

I was hoping to hear from Mr. Brooks to give you new dates before responding to you. I can confirm that he will not attend the November 20 deposition.

I have not received any further direction at this time from him so I don't want to spend more time on his file until that happens.

Best, Richard

=====



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On Wed, Nov 11, 2015 at 10:12 AM, Fraker, Andrew S. <afraker@ngelaw.com> wrote:

Richard,

Following up on my voice mail last Friday, we are disappointed to learn that, after our long efforts to schedule Mr. Brooks' deposition on a mutually agreeable date, he has made plans to be out of the country on the date on which we agreed. Nevertheless, to avoid any misunderstanding on the matter, please confirm that Mr. Brooks will not appear for deposition as agreed and noticed on November 20, 2015. If that is in fact the case, then, as I mentioned, we need to quickly reschedule his deposition for another date certain, rebook flights and determine whether we will need to move to suspend the proceedings to accommodate the new date. Please let us have a new date certain for the deposition as soon as possible.

To protect the interests of our client, if we do not hear from you with such a date by November 18, 2015, we will file a motion to suspend the proceedings so that we can subpoena Mr. Brooks pursuant to TBMP § 703.01(f)(2).

Best regards,

Andrew

Andrew S. Fraker

Attorney at Law

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Chicago IL • 60602-3801
312.269.5280 phone • 312.429.3588 fax

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